GOVERNOR ARNOLD SCHWARZENEGGER

STATEMENT OF DECISION

Request for Clemency by Albert Greenwood Brown, Jr.

Albert Greenwood Brown, Jr. was convicted of the 1980 rape and murder of 15-year-old Susan J. A California jury sentenced Brown to death for Susan's murder. Almost 30 years later, Brown is scheduled for execution on September 30, 2010. Brown requests that I grant him a reprieve so that the next governor may consider his clemency request or, in the alternative, that I commute his death sentence to life in prison without the possibility of parole.

In 1977, Brown raped 14-year-old Kelly P. when he discovered her in the home he had broken into one morning.[1] During the trial, when Kelly was about to testify, Brown pled guilty to rape. He was sentenced to serve four years in State prison. He was released in June 1980 to serve one year on parole.

On October 28, 1980, as Susan J. walked past a Riverside orange grove on her way to school, Brown, in jogging clothes, waylaid, raped, and strangled her to death.

Sometime between 7:00 and 7:30 that evening, Brown anonymously called Susan's home and spoke with Susan's mother. Brown said, "Hello, Mrs. J., Susie isn't home from school yet, is she?" Mrs. J. replied that she was not, and Brown declared, "You will never see your daughter again. You can find her body on the corner of Victoria and Gibson." Brown hung up, and Mrs. J. telephoned the police.

Brown made other similar calls that evening. At around 7:30, Brown called and said, "On the corner of Gibson and Victoria, fifth row, you will find a white Caucasian body of a young girl in the orange grove." He called the J. home again

[1] The facts in this decision are reported in greater detail in *People v. Brown* (1985) 40 Cal.3d 512, 522-525 (hereafter *Brown I*), *People v. Brown* (1988) 45 Cal.3d 1247, 1251-1252 (hereafter *Brown II*), and *Brown v. Ornoski* (9th Cir. 2007) 503 F.3d 1006, 1008-1010.

around 8:30 that evening and spoke with a police officer. Brown said, "You can find Sue's identification in a telephone booth at the Texaco station at Arlington and Indiana." About an hour later, he called and said, "In the tenth row, you'll find the body."

Officers found Susan's body in the orange grove. Her body was lying face down, with dirt piled up on both sides of her head. Her body was nude below the waist, except for socks, and her bra was partially pulled out from under her blouse. A shoelace, apparently from one of Susan's shoes, was wrapped tightly around her neck. Officers also found Susan's school-identification cards in a telephone booth at the Texaco station at the corner of Arlington and Indiana.

Brown was arrested and, following a jury trial, convicted of first degree murder and rape with the infliction of great bodily injury. The jury made a special finding that the murder was premeditated, and found true a special circumstance that the murder was committed in the course of a rape. The jury sentenced Brown to death.

Before submitting a clemency petition, Brown exhausted his State and federal appeals. The courts upheld his convictions and death sentence.[2] The California Supreme Court described the evidence against Brown as "overwhelming,"[3] and -- not once, but twice -- the California Supreme Court unanimously upheld Brown's convictions and the jury's finding of a special circumstance in this case. Among other evidence, witnesses identified Brown and his car in the vicinity of the orange grove on the morning of the murder. Inside Brown's house, police found a telephone directory that was turned to the page containing the J.s' listing; also found in the house were newspaper articles about the murder and two of Susan's schoolbooks. Evidence in Brown's house matched evidence police recovered in the Texaco telephone booth. And jogging clothes and running shoes were found in Brown's work locker. Additionally, two of Brown's acquaintances identified Brown as the man who made the taunting phone calls on the evening of the murder. Despite the strong evidence against Brown, he denies that he raped and murdered Susan.

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[2] *Brown I*, *supra*, 40 Cal.3d 512 (direct appeal affirming judgment of guilt and special circumstance finding, but reversing penalty judgment), judg. revd. and cause remanded for further proceedings in *California v. Brown* (1987) 479 U.S. 538; *Brown II*, *supra*, 45 Cal.3d 1247 (reaffirming convictions and special circumstance finding on remand, but reversing penalty judgment and remanding to trial court); *People v. Brown* (1993) 6 Cal.4th 322 (affirming death judgment after remand), cert. den. *Brown v. California* (1994) 513 U.S. 845; *In re Brown* (June 3, 1999, S057107) (habeas corpus proceeding); *Brown v. Ornoski*, *supra*, 503 F.3d 1006 (habeas corpus proceeding), cert. den. *Brown v. Ayers* (2008) 129 S.Ct. 63.

[3] *Brown II*, *supra*, 45 Cal.3d at p. 1251.

Brown now seeks clemency in the form of a reprieve, so that the next governor may consider his clemency request, or in the form of a commutation to life in prison without the possibility of parole.

Brown first asserts that a reprieve is appropriate because the history of clemency in California suggests an "extremely slim" likelihood that Brown will receive clemency. As Governor, I am vested with discretion to decide the clemency request before me. The decision whether or not to grant clemency is always difficult, and this case is no exception. Clemency decisions are made on a case-by-case basis, and previous clemency decisions based on different factual and legal circumstances have no bearing on Brown's request for clemency.

Brown also argues that a reprieve is appropriate because State and Riverside County officials took steps in various legal proceedings to enforce the death penalty. Brown claims that these steps "create a pervasive atmosphere of unfairness, which undermines the integrity of these [clemency] proceedings," and that a reprieve is necessary to, "preserv[e] the integrity of the clemency process as well as the appearance that the executive power has been exercised in a conscientious and meaningful manner." Contrary to Brown's claims, officials took lawful steps to enforce the death penalty against him.

Litigation challenging the death penalty is expected. Since filing his clemency petition, Brown has continued to challenge the State's three-drug lethal injection regulations in State and federal courts. And the State is defending these legal challenges. But the existence of such litigation, including the legal arguments presented by the parties, is a separate matter and not part of my clemency decision.

Along with his reprieve request, Brown alternatively requests a commutation of his death sentence. Brown bases his clemency request on certain mitigating background and mental-impairment information that was not presented to the jury before it rendered its penalty judgment. As correctly noted by Brown himself, the courts rejected his claims because the introduction of this evidence would not have changed the jury's death verdict. Brown's plea for mercy is based on the very same claims and evidence.

The jury considered mitigating evidence during Brown's trial, including evidence related to his background and mental impairments. The California Supreme Court noted that the defense presented psychiatric and background evidence suggesting that Brown, although he was legally sane and had no organic brain damage, suffered severe emotional problems, including extreme sexual maladjustment and

dysfunction.[4] A defense psychiatrist opined that Brown killed Susan out of shame for raping her, and that Brown's telephone calls also indicated shame and a desire to be caught. The psychiatrist urged that Brown was not violent by nature, was dangerous only to women, and would not be a problem in custody. Numerous relatives testified that Brown had a kind, nonviolent nature and to their affection for him. They pled for his life. Brown also took the stand during the penalty phase, and although he maintained that he did not rape and murder Susan, he expressed remorse for the rape of Kelly P.

But Brown's mitigating evidence is dwarfed by the mountain of aggravating evidence the jury considered, including the brutal circumstances of Susan's murder, the taunting phone calls that followed, and an earlier conviction for the 1977 rape of Kelly P.

Nonetheless, Brown claims that some mitigating evidence discovered after trial now warrants mercy. Brown does not claim that he is incompetent or insane, but claims that he is brain damaged "to a degree that significantly impaired his ability to control his impulses and action." In particular, Brown now claims that he suffers from attention deficit disorder, dyslexia, and impulse control disorders and that his "life story" of repeated failure, frustration, grandiose delusions and lack of control was not presented to the jury during the penalty phase.

But this mitigating evidence was thoroughly considered and rejected by various courts. In fact, the United States District Court for the Central District of California held a two-day evidentiary hearing to address two claims of ineffective assistance of counsel during the penalty phase. Brown claimed that his counsel failed to conduct an adequate background investigation and that if additional information had been presented to a competently trained neuropsychologist (as opposed to a psychiatrist), such an expert could have presented a more compelling case to the jury.[5] Similar to Brown's clemency petition, Brown asserted there that if the jury had known of the later-discovered background and mental-impairment information, the jury might have imposed a lesser sentence.[6] However, in the district court's 2004 findings of fact and conclusions of law, the court stated that, "The jury was in a good position to evaluate [Brown], based on its knowledge [of] the crime, [Brown's] past behavior, and its observations of [Brown] himself. . . . Even accepting all the evidence that [Brown] claims was necessary to a full

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[4] *Brown II*, *supra*, 45 Cal.3d at p. 1252.
[5] *Brown v. Woodford* (C.D.Cal. July 7, 2004, Case No. CV 94-8150-ABC) Dock. 252; *Brown v. Ornoski*, *supra*, 503 F.3d at p. 1013.
[6] *Brown v. Woodford* (C.D.Cal. July 7, 2004, Case No. CV 94-8150-ABC) Dock. 252 at p. 2.

presentation on his behalf in the penalty phase at trial, the Court finds *no likelihood that the verdict would have been different*."[7] (Italics added.) The United States Court of Appeals for the Ninth Circuit affirmed the district court's decision denying Brown's claims.[8]

In sum, the courts found that -- even if the jury were aware of Brown's later-discovered evidence -- the jury would not have reached a different decision. No basis exists for me to second guess the decision by the jury or the decisions by the courts evaluating and rejecting Brown's claims.

Brown is correct that a governor's power to show mercy is not constrained by the fact that an inmate's death sentence has been affirmed by the courts. However, nothing in the record or materials before me compels a grant of clemency. The guilt and aggravating evidence is overwhelming, and the mitigation evidence is just the opposite. Brown's jury reasonably concluded that a penalty of death was appropriate in this case, and I have no reason to disagree.

Therefore, based on the totality of circumstances in this case, Brown's request for clemency, in the form of a reprieve or commutation, is denied.

DATED: 09.29.10

ARNOLD SCHWARZENEGGER
Governor of the State of California

[7] *Brown v. Woodford* (C.D.Cal. Oct. 25, 2004, Case No. CV 94-8150-ABC) Dock. 260 at p. 3.
[8] *Brown v. Ornoski, supra*, 503 F.3d 1006.